



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Yindra Auto Sales, Inc.

Case No: DOT-15-0024

FINAL DECISION

On September 8, 2015, Joanne Monday filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Yindra Auto Sales, Inc., (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Herald Times Reporter, a newspaper published in Manitowoc, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 7, 2015. No additional claims were filed. Joanne Monday's claim was forwarded by the Department to the Division of Hearings and Appeals (DHA). On January 28, 2016, the undersigned Administrative Law Judge (ALJ) issued a Preliminary Determination in this matter. On February 25, 2016, Christopher Yindra, on behalf of the Dealer filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b).

In response to the objection, a hearing in this matter was scheduled to be conducted on April 1, 2016, in Manitowoc, Wisconsin. On April 1, 2016, Mr. Yindra sent an email to the DHA advising that he was home with an ill child and would not be attending the hearing. By letter dated April 5, 2016, the ALJ established a schedule for the parties to submit additional documents and written testimony in lieu of rescheduling the hearing. The letter advised the parties that documents and written testimony would be considered by the ALJ in issuing the final decision in this matter. The deadline for Mr. Yindra to submit any documents and written testimony that he wanted considered was April 15, 2016. No documents or written testimony were filed by Mr. Yindra. Accordingly, pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Joanne Monday
1801 Thelen Avenue
Kaukauna, WI 54130

Christopher Yindra
Yindra Auto Sales, Inc.
1323 Westwood Lane
Manitowoc, WI 54220

International Fidelity Insurance Company
One Newark Center
Newark, NJ 07102

Findings of Fact

1. Yindra Auto Sales, Inc. (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 3601 Calumet Avenue, Manitowoc, Wisconsin. The Dealer was placed out of business effective May 31, 2015.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from June 1, 2013, until it was cancelled effective September 27, 2015 (Bond No. 0621418 from International Fidelity Insurance Company).

3. On May 16, 2015, Joanne Monday (Monday) purchased a 2009 Dodge Journey SUV, vehicle identification number 3D4GG57V89T139949, from the Dealer. According to the purchase contract, Monday paid \$11,534.00, including taxes and registration fees, for the vehicle. The Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale by the Dealer indicated no problems with the vehicle and that all equipment was legal. The Wisconsin Buyers Guide also disclosed no title brands for the vehicle.

4. Monday did not receive a title or registration for the vehicle. On July 31, 2015, Monday filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint was able to process an application for a title and registration for the vehicle and it is now titled and registered in Monday's name. In the course of his investigation, the investigator discovered that the vehicle had been branded a "lemon" in New York and should have a title brand of "Manufacturer Buyback/Lemon" on the Wisconsin title.

5. The investigator informed Monday of the undisclosed title brand. Based on this information, Monday no longer wants the vehicle. On September 8, 2015, Monday filed a claim against the surety bond of the Dealer. The claim is in the amount of \$12,498.23 and is itemized as the \$11,534.00 purchase price of the vehicle, \$561.58 for repairs done on the vehicle on July 20, 2015, and \$402.65 for repairs done on the vehicle on September 3, 2015.

6. The Dealer's failure to disclose the vehicle's manufacture buyback history and title brand constitutes a violation of Wis. Admin. Code § Trans 139.04(6). The appropriate remedy for this violation is to award Monday the difference between what she paid for the vehicle and the value of the vehicle with a brand of "Manufacturer Buyback/Lemon" on the title.

However, there is no basis in the record to determine the value of the vehicle with a “Manufacturer Buyback/Lemon” brand on the title. A reasonable alternative remedy is to rescind the transaction.

7. The other items on Monday’s claim are reimbursement for repairs. On her claim Monday states that brakes were “Dangerously Bad.” However, the brakes were repaired more than two months after she purchased the vehicle. There is no documentation that the brakes were defective at the time the vehicle was purchased or, if they were, that the Dealer knew or should have known that they were defective. Another item Monday is seeking reimbursement for is the repair of a coolant leak. This repair was made three and a half months after Monday purchased the vehicle. There is no documentation that the cooling system leaked at the time the vehicle was purchased or, if it was, that the Dealer knew or should have known that it was leaking when Monday purchased the vehicle. The final repairs Monday is seeking reimbursement for are an oil change and lube job. These are maintenance items, not mechanical defects of the vehicle.

8. Dealers are only required to disclose defects that are discoverable during a reasonable presale inspection of the vehicle. According to the Wisconsin Buyers Guide, the mileage on the vehicle at the time Monday purchased it was 78,764 miles. The mileage at the time the brakes were repaired was 80,948 and at the time of the oil change and cooling system repair was 82,060 miles. Without a showing that the brakes and cooling system were defective and that the Dealer knew or should have discovered the defects during a presale inspection, it is not an allowable claim to reimburse Monday for these repairs and maintenance.

9. Monday filed a bond claim within three years of the ending date of the period the International Fidelity Insurance Company bond was in effect and it is, therefore, a timely claim.

10. Monday sustained a loss as a result of the Dealer’s violation of Wis. Admin. Code § Trans 139.04(6). The loss sustained by Monday was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Monday supplied documentation to support a claim in the amount of \$11,534.00, the purchase price of the vehicle.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the surety bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to Monday's claim, the Dealer violated Wis. Admin. Code § Trans 139.04(6). A violation of Wis. Admin Code § Trans 139.04(6), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is listed in Wis. Admin. Code § Trans 140.21(1)(c)1 as one of the violations upon which a claim against a motor vehicle dealer's bond can be based. Monday sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Joanne Monday's claim arose on May 16, 2015, the day she purchased the vehicle from the Dealer. The surety bond issued to the Dealer by International Fidelity Insurance Company covers a one-year period commencing on June 1, 2014. The claim arose during the period covered by the surety bond.

2. Joanne Monday filed a claim against the motor vehicle dealer bond of the Dealer on September 8, 2015. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Joanne Monday sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license. Ms. Monday has submitted documentation to support a claim in the amount of \$11,534.00. Because she is being reimbursed the purchase price of the vehicle as a result of the Dealer's actions, it

would constitute unjust enrichment to allow Ms. Monday to also retain ownership of the vehicle. Accordingly, she will be required to surrender the vehicle to International Fidelity Insurance Company.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Joanne Monday against the motor vehicle dealer bond of Yindra Auto Sales, Inc., is APPROVED in the amount of \$11,534.00. International Fidelity Insurance Company shall pay Ms. Monday this amount for her loss attributable to the actions of Yindra Auto Sales, Inc. Upon receipt of the payment, Joanne Monday shall surrender possession and title of the vehicle to International Fidelity Insurance Company.

Dated at Madison, Wisconsin on May 2, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
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By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.